

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
STANLEY TAGGARES and DELORES
TAGGARES dba TAGGARES RANCHES,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 79-174, 79-175,
and 79-176

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of orders canceling three permits to appropriate groundwater, came on for hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana, Member, convened at Yakima, Washington, on September 10, 1980. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Stanley Taggares appeared and represented himself. Respondent appeared by Laura E. Eckert, Assistant Attorney General.

1 Reporter Linda S. Hale recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I.

7 This matter arises in an agricultural area about twenty miles east
8 of Yakima and just south of the Yakima Firing Range.

9 On October 24, 1966, Charles L. Marley applied to the state for
10 three permits to appropriate public groundwater. These applications
11 specified one well in each of three sections of land for the purpose
12 of irrigation. Permits were granted accordingly. Each permit
13 specified that water be put to beneficial use by a date in 1972. For
14 ease of reference the three permits and corresponding wells shall be
15 referred to by their application numbers: 7742, 7802, and 7803.

16 Marley drilled well 7802 to a depth of some 800 feet at which
17 point the well caved in rendering it unproductive. Marley never began
18 construction of the 7742 or 7803 well. In 1971, one year before the
19 time for putting the public ground water to beneficial use, Marley
20 sold much of the land to be irrigated to appellant Taggares. Although
21 Marley made no progress under the three permits beyond his
22 unsuccessful attempt under 7802, all three permits were held by Marley
23 until assigned to Taggares in 1973.

24 II.

25 Within one month after assignment of the three permits, Taggares
26 contracted for the drilling of well 7803. Drilling commenced soon

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1 after and continued until late 1974. At that point a dispute had
2 arisen between Taggares and his well driller over both the progress
3 being made and the payment owing. The well driller withdrew from the
4 site and filed a suit against Taggares in Benton County Superior
5 Court. This has proceeded upwards to the Supreme Court where it is
6 now pending. Throughout that litigation there has been no order of
7 any court prohibiting Taggares from completing the unfinished works on
8 well 7803. Apparently, opposing counsel in the litigation warned
9 Taggares against it verbally, however. There has been and is no
10 physical impediment to completing development of well 7803. Although
11 the well driller apparently did not release his well log to Taggares,
12 we find that this was no substantial impediment to completing
13 development of well 7803. Taggares has not offered in this matter any
14 written request to obtain the well log under rules of discovery
15 available in the Benton County litigation. Well 7803 is now 708 feet
16 deep and to produce the amount of groundwater set forth in its permit,
17 would need to be some 1,400 feet deep. Taggares estimates that this
18 would take three more years. There has been no attempt to complete
19 development of well 7803 since 1974.

20 III.

21 Also within a short time after assignment of the three permits in
22 1973, Taggares redrilled well 7802, which had caved in, to a depth of
23 206 feet. At that depth a tool was lost and the well cemented off.
24 The well was test pumped at 650 gallons per minutes whereas its permit
25 calls for 2,250 gallons per minute. Taggares has not sought a
26 certificate for this lesser rate of withdrawal. In 1976, when last

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1 tested, there was no significant production from well 7802. There has
2 been no attempt to complete development of well 7802 since 1973.

3 IV.

4 Taggares has made no attempt to develop well 7742 since the permit
5 was assigned to him in 1973.

6 V.

7 Since the issuance of permit 7803, the Department of Ecology has,
8 at the request of Marley, granted three written extensions of time to
9 apply the public ground water to a beneficial use. Thereafter, it
10 granted seven written extensions at the request of Taggares. These
11 resulted in an extension of the original five-year period to a period
12 of more than twelve years. Throughout these years, Department of
13 Ecology has issued written reminders to Taggares that well
14 construction was to be completed. Some two years ago the requests for
15 extension were met by Department of Ecology's request for more
16 information substantiating the need for an extension. The Department
17 of Ecology has conducted informal conferences with Taggares expressing
18 its concerns over the repeated and protracted history of extensions.
19 A similar record of written and oral correspondence exists regarding
20 the other two wells, 7802 and 7742.

21 VI.

22 Taggares has spent between \$40,000 and \$70,000 in the uncompleted
23 development of well 7803 which ended in 1974. He contends that lack
24 of financing is the reason for his failure to complete development of
25 the three wells in question. At the hearing in this matter, some six
26 years after the last attempt to complete development of any of the
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1 three wells, Taggares has not proven a present prospect that he will
2 obtain financing, in the foreseeable future, to complete development
3 of any of the three wells.

4 VII.

5 Taggares' lands to be served by the three wells now produce
6 adequate crops of dry land wheat as do other lands in the area.

7 The State Department of Natural Resources (DNR) applied for a
8 groundwater permit within the section 16 adjacent to the section 15
9 which is the site of well 7742. This application was made in 1976.
10 Construction of a well began in 1978 and the well has now, in 1980,
11 been completed and test pumped. The DNR well is some 1,300 feet deep.

12 A person named Changala applied for a groundwater permit within
13 the section 13 adjacent to the sections 18 and 19 which are the sites
14 of wells 7802 and 7803. This application was made in 1979.
15 Construction of a well has begun and has proceeded to a depth of 1,800
16 feet at an approximate cost of \$225,000.

17 Taggares' permits for his three uncompleted wells enjoy a 1966
18 priority date, and thus are senior to the permits of DNR and
19 Changala. Thus, were Taggares to complete his wells under extensions
20 of his 1966 permits, wells of DNR and Changala would be subordinated
21 during times of water shortage and subject to regulation in favor of
22 the Taggares wells notwithstanding that the Taggares well would be
23 last into production.

24 VIII.

25 Any Conclusions of Law which should be deemed a Finding of Fact is
6 hereby adopted as such.

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1 From these Findings the Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 Subject to existing rights, all waters within the state belong to
5 the public. Water Code--1917 Act, chapter 90.03 RCW; and, see also
6 RCW 90.44.020 extending this principle to groundwater. Applications
7 for permits for appropriation of underground water shall be made in
8 the same form and manner provided in RCW 90.03.250 through 90.03.310.
9 See RCW 90.44.060.

10 II.

11 The pertinent statutory section here is the one dealing with
12 construction of works and placing water to beneficial use after a
13 permit is issued. This is RCW 90.03.320 which provides:

14 RCW 90.03.320. Appropriation procedure--Construction
15 work. Actual construction work shall be commenced on
16 any project for which permit has been granted within
17 such reasonable time as shall be prescribed by the
18 supervisor of water resources, and shall thereafter
19 be prosecuted with diligence and completed within the
20 time prescribed by the supervisor. The supervisor,
21 in fixing the time for the commencement of the work,
22 or for the completion thereof and the application of
23 the water to the beneficial use prescribed in the
24 permit, shall take into consideration the cost and
25 magnitude of the project and the engineering and
26 physical features to be encountered, and shall allow
27 such time as shall be reasonable and just under the
conditions then existing, having due regard for the
public welfare and public interests affected: and,
for good cause shown, he shall extend the time or
times fixed as aforesaid, and shall grant such
further period or periods as may be reasonably
necessary, having due regard to the good faith of the
applicant and the public interests affected. If the
terms of the permit or extension thereof, are not
complied with the supervisor shall give notice by
registered mail that such permit will be canceled
unless the holders thereof shall show cause within
sixty days why the same should not be so canceled.

1 If cause be not shown, said permit shall be
2 canceled. (Emphasis added.)

3 It follows from this that "good cause" to extend the time for
4 applying water to a beneficial use and "good faith," must be evaluated
5 with a view toward the diligence shown by the permittee under the
6 initial construction schedule and prior extensions. The permittee
7 herein, Taggares, has not shown diligence in completing the three
8 wells at issue. To the contrary, repeated extensions granted with the
9 understanding that progress would be made have resulted in no attempt
10 to complete the wells for the past six years. The appellant has not
11 shown any present prospect of changed circumstances which lead us to
12 suppose that a further extension will be more fruitful than those of
13 the past. The appellant has not shown good cause for an extension of
14 the well construction schedule under his three permits.

15 III.

16 The circumstances of this case also show that further extensions
17 of the three permits in question would not be in the public interest
18 as that term is used in RCW 90.03.320, above. This is so because of
19 the diligence of those holding junior permits, DNR and Changala, in
20 developing wells in the close vicinity to appellant's senior but
21 undeveloped permits. Such a condition raises the possibility that
22 those who have diligently applied water to a beneficial use at
23 considerable expense will be subordinate in right to one who has not
24 proceeded with diligence and who would apply water to a
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1 beneficial use at an indefinite future time. The United States
2 Supreme Court has said:

3 "The essence of the doctrine of prior appropriation
4 is beneficial use, not a stale or barren claim. Only
5 diligence and good faith will keep the privilege
6 alive...When these are shown to be lacking, the water
right will fail, or fail to the extent that equity
requires." Washington v. Oregon, 297 U.S. 517,
527-528 (1936).

7 The further extension requested by appellant would unfairly
8 handicap those other persons who have diligently worked to put water
9 to beneficial use and would violate the concern for public interest
10 stated in RCW 90.03.320.

11 IV.

12 The Department of Ecology correctly canceled appellant's three
13 permits to appropriate public groundwater. The appellant may make new
14 applications for the same quantity of groundwater and same wells as
15 covered by the canceled permits. Such new applications will be of
16 correspondingly lesser priority and will entail construction schedules
17 which must be met with diligence or the permit lost.

18 V.

19 Any Findings of Fact which should be deemed a Conclusion of Law is
20 hereby adopted as such.

21 From these Conclusions the Board enters this
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ORDER

The Department of Ecology orders cancelling appellant's permits
number 7742, 7802, and 7803 are hereby affirmed.

DONE at Lacey, Washington, this 10th day of December, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member

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